

AMENDED IN ASSEMBLY AUGUST 15, 2016

AMENDED IN ASSEMBLY JUNE 21, 2016

AMENDED IN ASSEMBLY JUNE 8, 2016

AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1040**

**Introduced by Senator Hill**

(Coauthor: Assembly Member Mullin)

February 12, 2016

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An act to add Chapter 9 (commencing with Section 9221) to Part 2 of Division 13 of the Family Code, ~~and to add Section 272.5 to the Penal Code~~, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

SB 1040, as amended, Hill. ~~Adoptions~~—*Postadoption instability*: unlawful transfer of custody.

(1) Existing law regulates adoption services by the State Department of Social Services, county adoption agencies, licensed adoption agencies, and other adoption service providers and requires the department to adopt regulations pertaining to those services.

*Existing law makes it a misdemeanor for a parent of a minor to willfully omit, without lawful excuse, to furnish necessary clothing, food, shelter, or medical attendance, or other remedial care for his or her child. Existing law makes it a crime for a parent of a child under 14 years of age, and a person to whom the child has been confided for nurture or education, to desert the child in any place with intent to abandon the child, as specified. Existing law makes it a misdemeanor*

*for a parent or organization, without holding a valid and unrevoked license to place children for adoption, to advertise in a public medium, as specified, that he, she, or it will place children for adoption, or accept, supply, provide, or obtain children for adoption, or to cause an advertisement to be published in or by a public medium soliciting, requesting, or asking for a child or children for adoption.*

This bill would require the State Department of Social Services, in consultation with specified individuals and entities, to establish a working group to review the challenges facing families with adopted children, to identify resources within the community that will assist families with these challenges, and to make recommendations to the Legislature as to the services that may be helpful to these families. The bill would require the working group to meet no later than April 1, 2017, and would require the working group's recommendations to be submitted in a report to the appropriate policy committees of the Legislature on or before April 1, 2018.

~~(2) Existing law makes it a misdemeanor for a parent of a minor to willfully omit, without lawful excuse, to furnish necessary clothing, food, shelter, or medical attendance, or other remedial care for his or her child. Existing law makes it a crime for a parent of a child under 14 years of age, and a person to whom the child has been confided for nurture or education, to desert the child in any place with intent to abandon the child, as specified. Existing law makes it a misdemeanor for a parent or organization, without holding a valid and unrevoked license to place children for adoption, to advertise in a public medium, as specified, that he, she, or it will place children for adoption, or accept, supply, provide, or obtain children for adoption, or to cause an advertisement to be published in or by a public medium soliciting, requesting, or asking for a child or children for adoption.~~

~~This bill would make it a crime to solicit to take custody of a minor under 14 years of age and to subsequently take custody of the minor without initiating a lawful guardianship proceeding or adoption proceeding within 90 days of taking physical custody of the minor. By creating a new crime, this bill would impose a state-mandated local program.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 9 (commencing with Section 9221) is  
2     added to Part 2 of Division 13 of the Family Code, to read:

3  
4           CHAPTER 9. *POSTADOPTION INSTABILITY AND UNLAWFUL*  
5                           TRANSFER OF CUSTODY  
6

7     9221. (a) The Legislature acknowledges that adoptive families  
8     often face special challenges. This is particularly true in the case  
9     of international adoptions, adoptions of special needs children,  
10    and adoptions of dependent children who have experienced abuse,  
11    neglect, and, often, multiple placements. The Legislature finds and  
12    declares that it is the public policy of the State of California to  
13    assist adoptive families and adopted children, and intends this  
14    section to ensure that these families receive the support needed to  
15    maintain the family unit, and when necessary, find new, permanent  
16    homes for youth.

17    (b) (1) In order to address and prevent the circumstances in  
18    which an adoptive parent seeks to engage in the unlawful transfer  
19    of the custody of a child, the State Department of Social Services  
20    shall, in consultation with child advocacy organizations, attorneys  
21    specializing in adoption and guardianships, counsel representing  
22    minors in dependency proceedings, the Judicial Council, *the office*  
23    *of the Attorney General, local law enforcement agencies,* foster  
24    caregiver organizations, county welfare officials, and individuals  
25    with expertise in the area of positive youth development, establish  
26    a working group to review the challenges facing families with  
27    adopted children, to identify resources within the community that  
28    will assist families with these challenges, and to make  
29    recommendations to the Legislature as to the services that may be  
30    helpful to these families.

31    (2) In developing the recommendations, the working group shall  
32    consider all of the following:

33    (A) Education and resources that would benefit prospective  
34    adoptive families prior to an adoption, and whether certain services

1 and education should be required before an adoption can be  
2 completed.

3 (B) The specific challenges facing the following families:  
4 families with special needs children, families with children adopted  
5 through the foster care system, and families with internationally  
6 adopted children.

7 (C) The distinct resources that are available to the different  
8 types of families specified in subparagraph (B), and whether any  
9 of the resources available to one type of family would also be  
10 beneficial to another type.

11 (D) The training and education that ~~is~~ *are* necessary to equip  
12 mental health professionals with the tools necessary to provide the  
13 families specified in subparagraph (B) with services tailored to  
14 their unique needs.

15 (E) How to effectively recruit more prospective adoptive  
16 families that are able to provide new, permanent, and loving homes  
17 to children coming out of disrupted adoptions.

18 (F) The feasibility of creating a clearinghouse of persons and  
19 entities that are knowledgeable in addressing the needs of, and  
20 finding subsequent placements for, children at risk of having their  
21 custody unlawfully transferred, including adoption agencies, social  
22 workers, attorneys, mental health professionals, and prospective  
23 adoptive parents.

24 (G) *Data currently available at the state and local levels for*  
25 *assessing the frequency of postadoption instability and the factors*  
26 *and causes associated with postadoption instability. The working*  
27 *group shall identify the gaps or limitations in data on postadoption*  
28 *instability.*

29 (H) *Identified best practices for collecting and tracking, on an*  
30 *ongoing basis, both quantitative and qualitative data to understand*  
31 *the extent of postadoption instability and to tailor supports to meet*  
32 *the needs of children and families experiencing postadoption*  
33 *instability.*

34 (I) *An assessment of any gaps or limitations in existing law,*  
35 *including provisions within the Penal Code, relating to the*  
36 *solicitation to take custody of a minor and the subsequent taking*  
37 *of custody of the minor without initiating a lawful guardianship*  
38 *proceeding or adoption proceeding.*

39 (c) (1) The working group shall meet no later than April 1,  
40 2017. The recommendations developed pursuant to this section

1 shall be submitted in a report to the appropriate policy committees  
2 of the Legislature on or before April 1, 2018.

3 (2) A report to be submitted pursuant to this subdivision shall  
4 be submitted in compliance with Section 9795 of the Government  
5 Code.

6 (3) The requirement for submitting a report pursuant to this  
7 subdivision is inoperative on June 1, 2022, pursuant to Section  
8 10231.5 of the Government Code.

9 *(d) For purposes of this section, “postadoption instability”*  
10 *includes regulated circumstances, including, but not limited to,*  
11 *adoption nullification or dissolution, and unregulated*  
12 *circumstances, including, but not limited to, the unlawful transfer*  
13 *of custody of an adopted child from the adoptive parent to another*  
14 *person or entity.*

15 ~~SEC. 2.— Section 272.5 is added to the Penal Code, to read:~~

16 ~~272.5.— (a) It is unlawful for a person to solicit by any means,~~  
17 ~~including, but not limited to, electronic communication via the~~  
18 ~~Internet, to take custody of a minor under 14 years of age and to~~  
19 ~~subsequently take custody of the minor without initiating a lawful~~  
20 ~~guardianship proceeding or adoption proceeding within 90 days~~  
21 ~~of taking physical custody of the minor consistent with the~~  
22 ~~requirements of Division 4 (commencing with Section 1400) of~~  
23 ~~the Probate Code or Division 13 (commencing with Section 8500)~~  
24 ~~of the Family Code. A violation of this section is punishable by~~  
25 ~~imprisonment pursuant to subdivision (h) of Section 1170, in a~~  
26 ~~county jail not exceeding one year, by a fine not exceeding one~~  
27 ~~thousand dollars (\$1,000), or by both that fine and imprisonment.~~

28 ~~(b) This section does not apply to either of the following:~~

29 ~~(1) A minor placed with a relative, as defined by paragraph (2)~~  
30 ~~of subdivision (c) of Section 361.3 of the Welfare and Institutions~~  
31 ~~Code.~~

32 ~~(2) Temporary placement of a minor by a parent, individual, or~~  
33 ~~entity for a designated short-term period with a specified intent~~  
34 ~~and time period for return of the minor, if the temporary placement~~  
35 ~~is due to a vacation or a school-sponsored function or activity or~~  
36 ~~the incarceration, military service, medical treatment, or incapacity~~  
37 ~~of a parent or guardian.~~

38 ~~SEC. 3.— No reimbursement is required by this act pursuant to~~  
39 ~~Section 6 of Article XIII B of the California Constitution because~~  
40 ~~the only costs that may be incurred by a local agency or school~~

1 ~~district will be incurred because this act creates a new crime or~~  
2 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
3 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
4 ~~the Government Code, or changes the definition of a crime within~~  
5 ~~the meaning of Section 6 of Article XIII B of the California~~  
6 ~~Constitution.~~

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